IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

TAX APPEAL No.204 of 1999

For Approval and Signature:

HON'BLE MR.JUSTICE D.A.MEHTA Sd/-
and
HON'BLE MS.JUSTICE H.N.DEVANI Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

C.C.(A),

Versus

PRADIP JIVANLAL KINARIWALA

Appearance:

1. TAX APPEAL No. 204 of 1999

MR MANISH R BHATT for Petitioner No. 1

MR SWATI SOPARKAR for Respondent No. 1

CORAM : HON'BLE MR.JUSTICE D.A.MEHTA
and
HON'BLE MS.JUSTICE H.N.DEVANI

Date of decision: 09/12/2004

ORAL JUDGEMENT

(Per : HON'BLE MR.JUSTICE D.A.MEHTA)

1. The following substantial question of law has

been framed while admitting the appeal on 01-11-2004:-

"Whether the Appellate Tribunal is right in law and on facts in directing the Assessing Officer to exclude the income of the 4 BOIs from the income of the assessee ?".

2. Heard Mr.M.R.Bhatt, learned Senior Standing Counsel for the appellant - revenue and Mr.S.N.Soparkar, learned Senior Advocate for the respondent - assessee.

3. On going through the impugned order of the Tribunal dated 06-01-1999 (Annexure-C) it transpires that the Tribunal has merely followed the respondent assessee's own case for Assessment Years 1985-86 and 1986-87 without assigning any independent reasons. It is necessary that the Tribunal is directed to decide the issue afresh in light of the subsequent developments and for the reasons stated in our common order dated 09-12-2004 in I.T.A. No.82 of 1997 and cognate matters.

4. In the result, the question is left unanswered and the Tribunal is directed to decide the issue afresh after giving an opportunity of hearing to the parties including an opportunity to place on record any further evidence that either side may like to bring on record. Accordingly, the appeal is disposed of. There shall be no order as to costs.

Sd/- Sd/-

[D.A.MEHTA,J] [H.N.DEVANI,J]

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'Bhavesh'